

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DERRICK ANDRE MITCHELL,

No. C 10-00598 SBA (PR)

Petitioner,

**ORDER DIRECTING PETITIONER TO
FILE AN AMENDED PETITION; AND
INSTRUCTIONS TO THE CLERK**

v.

TIM VIRGA, Acting Warden,

Respondent.

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On September 28, 2011, the Court issued an Order granting Petitioner's request for a stay of proceedings while he returned to state court to exhaust his administrative remedies. The Court also stated:

Nothing further will take place in this action until Petitioner receives a final decision from the California Supreme Court and, within **thirty (30) days** of doing so, moves to reopen the action, lift the Court's stay and amend the stayed petition to add the newly-exhausted claims.

(Sept. 28, 2011 Order at 9.)

On July 9, 2012, Petitioner sent a letter to the Court requesting copies of his petition and the Court's September 28, 2011 Order.

On August 15, 2012, Petitioner informed the Court that his state proceedings had concluded; however, he did not amend the stayed petition to add the newly-exhausted claims. Therefore,

Petitioner must file an amended petition in this Court which incorporates the newly-exhausted claims he intends to raise in federal court, as directed below.

CONCLUSION

1. No later than **twenty-eight (28) days** of the date of this Order, Petitioner must file an amended petition in this Court which incorporates the newly-exhausted claims he intends to raise in federal court. The Court will lift the stay on the date that Petitioner files his amended petition. Petitioner must submit the amended petition on the attached blank habeas petition form, clearly label the petition as the "Amended Petition," and write in the case number for this action on the form. He should also attach to his amended petition a copy of his petition to the California Supreme Court, if the document is available to him. **If Petitioner fails to file an amended petition within the prescribed period, the Court will dismiss this action without prejudice for failure to prosecute.**

2. The Clerk of the Court shall send Petitioner a blank § 2254 habeas petition form. The Clerk shall also send Petitioner copies of his petition form and the attached handwritten "Points and Authorities In Support of Petitioner's Petition for Writ of Habeas Corpus" (docket no. 1, pages 1-30), and the Court's September 28, 2011 Order (docket no. 27).

IT IS SO ORDERED.

DATED: 8/22/12


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 DERRICK ANDRE MITCHELL,

5 Plaintiff,

6 v.

7 PEOPLE OF THE STATE OF CALIFORNIA et
8 al,

9 Defendant.
10 _____/

Case Number: CV10-00598 SBA

CERTIFICATE OF SERVICE

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on August 22, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
16 located in the Clerk's office.

17 Derrick A. Mitchell H-20446
18 California State Prison - Sacramento
19 P.O. Box 290066
20 Represa, CA 95671

21 Dated: August 22, 2012

22 Richard W. Wieking, Clerk
23 By: Lisa Clark, Deputy Clerk
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